

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JULIETTE SENATUS, LUNJUSNA	:	
CONTE, and LENS PIERRE-LOUIS,	:	
a minor,	:	
Plaintiffs	:	
	:	
v.	:	C.A. No.: S16C-10-005 RFS
	:	
DONEGAL MUTUAL INSURANCE	:	
COMPANY (NAIC #13692),	:	
Defendant.	:	

MEMORANDUM OPINION

Upon Defendants' Motion for Summary Judgment. Denied.
Upon Plaintiff's Motion to Compel. Denied.

Date Submitted: December 5, 2017
Date Decided: December 13, 2017

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STOKES, J.

I. INTRODUCTION

Two matters are presently before the Court. The first is a Motion for Summary Judgment against Plaintiff Juliette Senatus (“Senatus”) filed by the Defendant, Donegal Mutual Insurance Company (“Donegal” or “Defendant”). For the foregoing reasons, Defendant’s Motion for Summary Judgment is **DENIED**. The second matter is a Motion to Compel Defendant’s Appearance at Depositions Noticed for December 20, 2017 filed by Plaintiff Lunjusna Conte (“Conte”). For the foregoing reasons, the Motion to Compel is **DENIED**.

II. FACTS AND PARTIES’ CONTENTIONS

Plaintiffs, Juliette Senatus, Lunjusna Conte, and Len Pierre-Louis (collectively “Plaintiffs”), claim that Donegal has failed to make payment on their medical bills and Senatus’s lost wages. As a result of the non-payment, Senatus claims that her credit rating has been threatened and that she has been forced to incur reasonable attorney’s fees.

As part of discovery, Plaintiffs were to disclose the identity of any expert witnesses and provide expert reports by August 31, 2017. Senatus did not comply with this deadline. During this time period, Senatus was between counsel and, at times, was *pro se*. Senatus does not dispute that she missed the expert deadline. She has since sent her expert report to Donegal.

As a result of Senatus’s failure to timely provide an expert report, Donegal moved for summary judgement. Donegal argued that, without expert testimony, Senatus could not properly assert her status as an injured person or that her medical expenses were reasonable and necessary. Senatus argues that, since she has now provided the report, Donegal has suffered no prejudice as a result of the delay. The report was received before the discovery deadline of January 31, 2018 and, according to Senatus, in plenty of time to prepare for the April 16, 2018 trial.

Additionally, Conte wishes to take the depositions of the persons identified in Donegal's answers to interrogatories as having been in charge of the claim. Those depositions have been noticed for December 20, 2017. However, due to various scheduling conflicts, Donegal's attorney of record, Brian Tome, Esq. ("Tome"), has stated that he will not be able to attend depositions on that date. Tome is the attorney of record for an asbestos case which also has depositions scheduled for that day. Furthermore, Tome has indicated that he will soon be replaced by another attorney in the present case. As an accommodation, Tome has suggested the date of January 9, 2018 to hold the depositions. This date is within the discovery period and Tome has confirmed the availability of all three witnesses for that date. However, Plaintiff Conte objects to this scheduling change, and seeks to have Defendant compelled to appear at the depositions on December 20, 2017.

III. STANDARD OF REVIEW

The Court may grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law."¹ The moving party bears the initial burden of showing no material issues of fact are present.² If the moving party properly supports their motion, the burden then shifts to the non-moving party to rebut the contention that no material issues of fact exist.³ In considering a motion for summary judgment, the Court must review the record in a light most favorable to the non-moving party.⁴ The Delaware Supreme Court illustrates the parameters of granting summary judgment as follows:

¹ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

² *Id.* at 681.

³ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁴ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

Under no circumstances, however, will summary judgment be granted when, from the evidence produced, there is a reasonable indication that a material fact is in dispute. Nor will summary judgment be granted if, upon an examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances.⁵

IV. ANALYSIS

A. Defendant's Motion for Summary Judgment

Donegal's Motion for Summary Judgment against Senatus is denied. The facts and circumstances surrounding the case do not support summary judgment. Courts must take into consideration the difficulties that arise when a party is *pro se*.⁶ Allowances can be made for *pro se* litigants.⁷ On July 21 and August 18, 2017, Senatus's previous counsel, C. Vanessa Louis-Humphrey, filed motions to withdraw as counsel. On September 1, 2017, the motions were granted, and Senatus was instructed to obtain new counsel within 30 days. Thus, during the period of time immediately preceding and immediately following the August 31, 2017 expert report deadline Sentus was without counsel. It has also come to light that Senatus had received an expert report on August 15, 2017, but she did not provide this report to Donegal or to the Court prior to the expert report deadline. The Court notes that Senatus's first language is not English, which likely contributed to the confusion.

Given the circumstances of this case, it is in the interest of justice for the case to continue. Donegal has received the expert report, and, although the report was received after the August 31, 2017 deadline, it was received well before the January 31, 2018 discovery deadline. Donegal has not suffered prejudice. Therefore, Defendant's Motion for Summary Judgment against Senatus is denied.

⁵ *Id.* at 468.

⁶ *Draper v. Medical Center of Delaware*, 767 A.2d 796, 798 (Del. 2001).

⁷ *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at *2 (Del. Super. Ct. March 28, 2011).

B. Conte's Motion to Compel

Conte's Motion to Compel certain Donegal representatives to attend depositions on December 20, 2017 is denied. While defense counsel made a commitment to attend and ensure the witnesses' attendance on the December 20 date, the Court recognizes that scheduling difficulties arise, especially given that Defendant is currently changing counsel. Also, in light of the fact that alternative dates have been suggested that still fall within the discovery period, the Court does not see the need to compel the depositions or impose sanctions at this time. That being said, the parties must still comply with the discovery schedule. Depositions should be re-noticed for a date before January 31, 2018. If necessary, Donegal may file a protective order once the new date has been noticed.

V. CONCLUSION

Considering the foregoing, Defendant's Motion for Summary Judgment against Juliette Senatus and Lunjusna Conte's Motion to Compel are **DENIED**.

IT IS SO ORDERED.